Supreme Court of the United States

OCTOBER TERM, 1940.

No.....

WILLIAM B. ROMANS AND EDNA M. HORAN,
Petitioners,

vs.

STATE OF MARYLAND.

BRIEF IN SUPPORT OF PETITION.

I.

Statement of the Case.

The statement of the case in the foregoing petition is, it is respectfully suggested, sufficient for the purposes of this brief and is hereby referred to and incorporated herein by reference.

II.

Specifications of Error.

(a) The Court of Appeals of Maryland below erred in affirming the the judgments and sentences of fines and imprisonment imposed by the Criminal Court of Baltimore City (R. 6).

(b) The Court below erred in refusing to consider, denying or ignoring *due process of law* guaranteed to citizens of the United States under the Fourteenth Amendment of the Constitution of the United States, (R. 23-25, 26-27, 35-39, 109).

(c) The Court below erred in affirming judgments of conviction, imposing fines and imprisonment on the petitioners here, who had not been informed of and charged with the crimes of which they were convicted, the proceedings being in violation of the 14th Amendment of the Constitution of the United States and also of Articles 21 and 23 of the Declaration of Rights of Maryland, (R. 113).

(d) The Court below erred in holding that the substitution of one person for another as a traverser charged with crime is a matter of form in violation of the constitutional guarantees, thus denies due process of law, 14th Amendment of the Constitution of the United States, and, the Declaration of Rights of Maryland, deprives one of his *liberty* or *property, but by the Law of the Land,* (R. 21-22, 29-32, 44, 50, 108).

III.

Constitutional Provisions and Statutes Involved.

Constitution of the United States Amendment XIV:

> Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or

property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Declaration of Rights of Maryland:

Art. 21. That in all criminal prosecutions, *every man hath a right to be informed of the accusation against him;* to have a copy of the indictment, or charge in due time (if required) to prepare his defense; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Art. 23. That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or *deprived of his life, liberty or property,* but by the judgment of his peers, or by the Law of the Land.

Maryland Code, Public General Laws (Flack) Article 27 (Vol. I, page 1280):

646. Whenever the misnomer of any defendant or defendants is pleaded in abatement to any indictment in any of the courts of this state having criminal jurisdiction, it shall be lawful for the State's Attorney prosecuting the same, or other person prosecuting for the state, on application to the Court, to amend the said indictment by inserting in the place of the name or names so erroneously set forth in the said indictment the true name or names of such party or parties, as disclosed in the said plea of abatement, and it shall be the duty of the clerk of the court to endorse the amendment, and to enter the said case upon the docket of the court, according to the true name or names of the party or parties so indicted.

IV.
ARGUMENT.
A.
Unless the Criminal Court of Baltimore City had Jurisdiction of the Person and the Subject Matter the Trial is a Mere Nullity.

Isabelle Romans, under three aliases, sister of William B. Romans, one of the petitioners, was presented by the grand jury for the offense of *obstructing justice,* was arrested and gave bail and then with her brother indicted for that offense and *conspiracy.* Edna M. Horan, *alias,* was later arrested on a bench warrant for an offense of *obstructing justice only.* She was placed on trial with William B. Romans and convicted of three offenses, one of obstructing justice, and *two of conspiracy.*

This court has announced that 'conviction upon a charge not made would be a sheer denial of due process'.

Thornhill v. Alabama, 310 U. S. 88 at 96.

See also:

State v. Goetz, 65 Kan. 125 at 128.
People v. Campbell, 4 Parker Crim. (N. Y.) 386 at 387-8.
Wilson v. State, 16 Texas 246 at 248.
West v. Cabell, 153 U. S. 78 at 85-7.

The phrase "by the Law of the Land" in Article 23 of the Declaration of Rights of Maryland has been declared by the Maryland Court of Appeals to have the same meaning as "due process of law" in the Federal Constitution.

Solvuca v. Ryan & Reilly Co., 131 Md. 270.

B.

The Accused Must be Informed of the Charge, I. E. Notice of the Charge Must be Given to the Accused.

To have notified William B. Romans by indictment that he was charged with conspiracy with his sister Isabelle Romans, who had been arrested and given bail and then discharged, is not being *informed of the accusation against him,* (conspiracy with Edna M. Horan, not a sister) the guarantee under Article 21 of the Maryland Declaration of Rights.

To try and convict the other petitioner, Edna M. Horan, on charges of conspiracy with William B. Romans, when she had never been served with any process charging her with conspiracy, is a more flagrant denial of that right.

The traverser must be informed of the *whole* charge and not of a part only.

Goeller v. State, 119 Md. 61 at 63-67.

> "Thus the accused shall have the 'right to be informed of the accusation against him and to have a copy of the indictment or charge in due time to prepare his defense' Bill of Rights, Art. 21, 'No person shall be held on presentment or indictment of a grand jury'. 5th. Amendment, United States Constitution. It is all the more necessary, therefore, that the presentment or charge should be full and definite so that if the accused should wish to avail himself of a speedy trial without waiting for the preparation and filing of a formal indictment he may safely do so."
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> State v. Kiefer, 90 Md. 165 at 173.

"It has never been doubted by this Court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law."

Powell v. Alabama, 287 U. S. 45 at 68.

C.

Discharging a Person Presented, Apprehended on Presentment, and Indicted so as to Substitute Another at the Trial, is Unknown in Criminal Procedure.

The trial court said;

"(The Court) that is, Isabelle Romans was arrested first," (R. 42).

And later inquired;

"(The Court) is Dolly Horan a defendant in this case?" (R. 43).

And further;

"(The Court) Then it seems to me all proceedings against Isabelle Romans be quashed; proceedings against Dolly Horan remain in full force." (R. 50-51).

The attempt to justify substituting one person, not indicted, apprehended or notified of the offenses charged, for another is, that an amendment for misnomer is allowable. It is only permitted, under the Maryland law, when a plea in abatement is interposed, *and no such plea was interposed.*

Md. Code, P. G. L. (Flack) Art. 27, Sec. 646.

A misnomer is a matter of form. To arrest Isabelle Romans after presentment, accept bail, and then indict Isabelle Romans, and issue summons for Isabelle Romans to come in for trial, is a certain, definite and continuous determination that Isabelle Romans is the person identified by the grand jury as the one accused of *obstructing justice* and *conspiracy*.

It is not mere matter of form, but *of substance* most substantial, to attempt to substitute another person, Edna M. Horan, charged with the offense of *obstructing justice* only—not conspiracy—for Isabelle Romans, discharge her, and convict the other for crimes of *obstructting justice* and *conspiracy*.

Under a statute permitting amendment in matter of form, it is generally held that the court may allow an amendment to an indictment in correction of a misnomer therein as to the name of the accused, when *no change of identity* is involved, the defect being one of form only.

7 A. L. R. (Anno.) p. 1520.

> "Third. The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our constitutional history. However, in view of its historical setting, and the wrongs which called it into being the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect at all times, people charged with or suspected of crime by those holding positions of power and authority".
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> Chambers v. Florida, 309 U. S. 227 at 235-6.

To convict Edna M. Horan, charged, if at all, with obstructing justice, of conspiracy also would be conviction

on a charge not made, and likewise would be the conviction of William B. Romans.

Conviction upon a charge not made is sheer denial of due process.

DeJonge v. Oregon, 299 U. S. 356 at 362.

D.

CONCLUSION.

Can it be held in a court of justice, where orderly procedure has been instituted for the protection of the citizen against the State, that it is *due process,* or, the *Law of the Land,* to charge one person with offenses, arrest another for a separate and different crime, and at the trial give the prosecuting officer for the State the right to substitute another, charged with that separate and different crime, for trial on an indictment returned by the grand jury and have the nisi prius court discharge the one, without trial, and convict the other? The answer is most certainly:

> "The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the presence of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."
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> Snyder v. Mass., 291 U. S. 97 at 122.

In this case we suggest to keep the balance true is to have the writ issue so that, as we believe the record

abundantly shows, the petitioners may not stand convicted of crimes for which they have never been charged under the law.

Respectfully submitted,

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and Edna M. Horan, Petitioners.